

**COMPLAINT PROCEDURES
for
SPECIAL EDUCATION**

Michigan Department of Education

October 1999

COMPLAINT PROCEDURES

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COMPLAINT PROCEDURES

I. RECEIPT OF THE COMPLAINT

A. Verbal Complaint

Upon receipt of an oral or informal complaint, the public educational agency staff person shall inform the complainant that she/he has a right to file a written complaint which shall meet the standards contained in Rule 340.1701(g) of the Revised Administrative Rules for Special Education (Rules) which defines a special education complaint. The complainant may delay filing a formal complaint to allow for an informal resolution.

B. Formal Written Complaint

In order for an intermediate school district (ISD) to investigate an allegation(s) pursuant to Rule 340.1851, the complaint must meet the criteria set forth in Rule 340.1701(g), paraphrased as follows:

1. A complaint must be written.
2. A complaint must be "specific." "Specific" means that the complaint alleges an identifiable action or failure to take action that can reasonably be investigated, and contains the particular circumstances under which the alleged uncorrected violation(s) occurred.
3. The alleged violation(s) must be uncorrected at the time the complaint is filed.
4. A complaint must include the facts on which the allegation(s) is based.
5. A complaint must relate to a specific provision of law within the jurisdiction of the investigating agency (see Rule 340.1701(g)(i-v) of the Rules).
6. A complaint must be signed.
7. The alleged violation must have occurred not more than one year prior to the date the complaint is filed unless a longer period is reasonable because of ongoing violation(s) or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. (34 C.F.R. §300.662(c))

C. Additional Procedures

1. Any complaint filed with a public educational agency shall be immediately forwarded to the appropriate agency* for processing. The agency* shall:
 - a. Assign a staff person to conduct an investigation of the allegation(s) who does not have administrative responsibility for the programs and/or services against which a complaint is filed.

* Questions concerning jurisdiction should be addressed to the Michigan Department of Education.

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- b. Send a copy of the section of the Rules which pertains to complaints (Part 8) and a copy of the Complaint Procedures to the complainant.
- c. Assist the complainant in formulating a complaint which meets the standards contained in the definition of a complaint.
- d. Assist the complainant in directing her/his complaint to the proper agency*.
- e. Inform the complainant that an appeal of the complaint/investigation findings may be filed with the Michigan Department of Education (MDE) if she/he disagrees with such findings.

II. THE INVESTIGATION PROCESS

A. Formal Investigation Report

The staff person assigned to investigate shall submit a formal investigation report. The formal investigation report shall contain the following:

- 1. The date the complaint is received. (A copy of the original complaint is to be attached to the investigation report.)
- 2. A statement of the allegation(s).
- 3. The rule(s) which governs the allegation(s) stated.
- 4. A summary of the activities carried out during the investigation shall include:
 - a. The identification of the person who conducted the investigation.
 - b. Name(s) of the student(s) involved in the complaint.
 - c. The operating school district and the resident school district.
 - d. The school building the student(s) attends (i.e., elementary, secondary, high school, separate facility).
 - e. The student's(s') category of eligibility.
 - f. The program(s)/service(s) the student(s) is receiving.
 - g. A list of the persons contacted, the method, and the date.
 - h. A list of documents and files utilized.
 - i. Documentation of any particular methods or procedures employed to gather information.
 - j. Information regarding how and when direct contact was made with the complainant for the purpose of discussing the complaint.
 - k. A list of the findings of fact.
- 5. Following the collection of data, the staff person assigned to the investigation must analyze the findings of fact in order to determine the facts as they relate to the specific provisions of law which were alleged to have been violated. These relevant findings of fact must be stated in the investigation report.
- 6. The investigation report must also include a determination of whether a violation(s) has or has not occurred.

*Questions concerning jurisdiction should be addressed to the MDE.

7. If the facts substantiate that there has been a specific violation(s), the complaint is valid, and the investigator must develop recommendations for corrective action.
8. If the findings of fact fail to support any of the alleged violation(s) in the complaint, the ISD investigation report* will conclude that no violation is determined.
9. A statement of appeal rights shall be included in the investigation report as required by Rule 340.1851(1).

B. Dissemination of Report

1. Copies of the investigation report must be sent to:
 - a. The complainant.
 - b. The public educational agency(ies) involved, and
 - c. The MDE.

C. Suggested Procedures for Handling Additional Violation(s)

During the course of the investigation, there may be occasions when the investigator will discover an additional violation(s) that was not included as part of the original complaint. When a new violation(s) is discovered, the investigator shall:

1. Immediately assess the issues and their relationship to the original complaint.
2. In keeping with the ISD's and the MDE's responsibility under law to correct violations of law, there may be some alternative actions that the investigator might consider under such circumstances:
 - a. Inform the administrator of the public educational agency(ies) involved in the original complaint investigation and note in the case file.
 - b. Send a letter describing the possible violation(s) to the administrator of the public educational agency(ies) involved in the original complaint investigation, with a copy to the complainant.
 - c. Process as an amendment to the original complaint or open as a new complaint (the new complaint must follow the procedures set forth in Section I).

D. Determination of Recommended Corrective Action

If the complaint is found to be valid, the ISD investigation report must contain recommended action to correct the situation. The staff person assigned to the investigation may identify possible alternative solutions that may be considered by the MDE in formulating the appropriate corrective action that must be undertaken by the public educational agency(ies) in violation.

*This report is completed by the MDE when the MDE conducts the complaint investigation.

Under 34 C.F.R. §300.660(b), in resolving a complaint in which it has found a failure to provide appropriate services, the MDE must address:

1. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and
2. Appropriate future provision of services for all students with disabilities.

If a parent provides special education program(s) and/or services(s), which are determined to be the responsibility of the agency, the MDE may, as appropriate, direct that agency to reimburse the parents for the cost(s) incurred by the parent. (34 C.F.R. §300.660(b)(1))

The MDE may, as appropriate, direct the compensatory programs and/or services to be provided. (34 C.F.R. §300.660(b)(2))

E. Time Line

1. Within 21 calendar days following the receipt of a formal complaint, the ISD must submit its investigation report to the complainant, the public educational agency(ies) involved, and the MDE. Under extenuating circumstances, an extension in the time lines may be requested, in writing, and granted by the MDE for good cause shown.
2. If a written complaint is received that is also the subject of a due process hearing under 34 C.F.R. §300.507 and 34 C.F.R. §300.520-§300.528, or contains multiple issues of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of that hearing. However, any issues in the complaint that are not part of the due process action must be resolved within the 60-calendar-day time line using these complaint procedures. (34 C.F.R. §300.661(c))
3. Proof of compliance shall be submitted by the administrator primarily in charge of special education programs and services for the public educational agency(ies), the chief administrative officer of the public educational agency(ies), and the president of the board of education if the agency is a school district. The proof of compliance shall assure that the actions directed by the MDE have been taken.

III. THE INTERMEDIATE SCHOOL DISTRICT VS. THE MICHIGAN DEPARTMENT OF EDUCATION INVESTIGATION

The ISD shall inform the complainant that she/he has a right to file a written formal complaint pursuant to Rule 340.1853, or the complainant may ask the MDE to investigate the complaint pursuant to Rule 340.1853. If the complainant requests that the complaint be filed with the MDE, the ISD shall immediately forward the complaint to the MDE. In the case of written and signed statements of allegation(s) initially received by the MDE, the MDE will review to determine if the statement of allegation(s) appears to meet the requirements of Rule 340.1701(g). The MDE may investigate a written complaint pursuant to these procedures.

The person assigned to investigate the complaint has the legal authority to examine appropriate records without the permission of the parent(s) (Family Educational Rights and Privacy Act of 1974 as amended, and its federal regulations).

A. Nonspecial Education Violation

1. If information received from the complainant indicates that the alleged violation(s) does not pertain to the Rules or regulations, the investigating agency shall direct the person to the appropriate public educational agency.
2. If the complainant indicates a possible violation of other civil rights based upon gender, race, religion, color, creed, or age, the complainant should be referred to the United States Department of Education, Office for Civil Rights.

IV. THE MICHIGAN DEPARTMENT OF EDUCATION REVIEW PROCESS

When the ISD has completed the investigation of a formal complaint, the investigation report is sent to the public educational agency(ies), the complainant, and the MDE.

Upon receipt of the ISD investigation report, the public educational agency(ies) found in violation will respond within ten calendar days to the investigation report by forwarding a proposed corrective action plan to the MDE. After the MDE has reviewed the ISD investigation report and the ISD and/or the local educational agency proposed corrective action plans, the MDE will direct corrective action to resolve issues found to be in violation.

V. THE APPEAL PROCESS

If the complaint is determined to be valid, the public educational agency(ies) must present proof that the situation has been or is being remedied in a satisfactory manner. When final proof is received and found to be acceptable, the issue is considered resolved. The MDE will send a statement of resolution to all parties summarizing the corrective action taken by the agency found in violation.

If the complaint is determined to be invalid, the complainant may contest the decision and request a state investigation. If this should happen, the MDE's staff member assigned will investigate issues brought forth on appeal.

Upon receipt of new allegations in a letter of appeal for a state level investigation of invalid findings and conclusions initially investigated by an ISD, the MDE will make the following determinations and take these actions:

- a. If the new allegation(s) are related to the allegations identified in the original letter of complaint and not addressed in the ISD investigation report, the MDE may investigate the new allegations in the state level investigation or remand to the ISD the new allegations for investigation.
- b. If the new allegation(s) are not related to the allegations identified in the original letter of complaint, the MDE will open a new complaint investigation on the new allegation(s).

If necessary, a visit to the educational agency(ies) may be made. The MDE review/report is to be completed within 60 calendar days of the date of receipt of the initial complaint and mailed to the appropriate parties.

If the ISD has not acted on a complaint or has not addressed all allegations in the complaint letter, the MDE may conduct its own investigation and report its findings to all parties. The MDE may also remand to the ISD any investigation that does not meet the requirements listed in Section II, The Investigation Process. The MDE, on its own

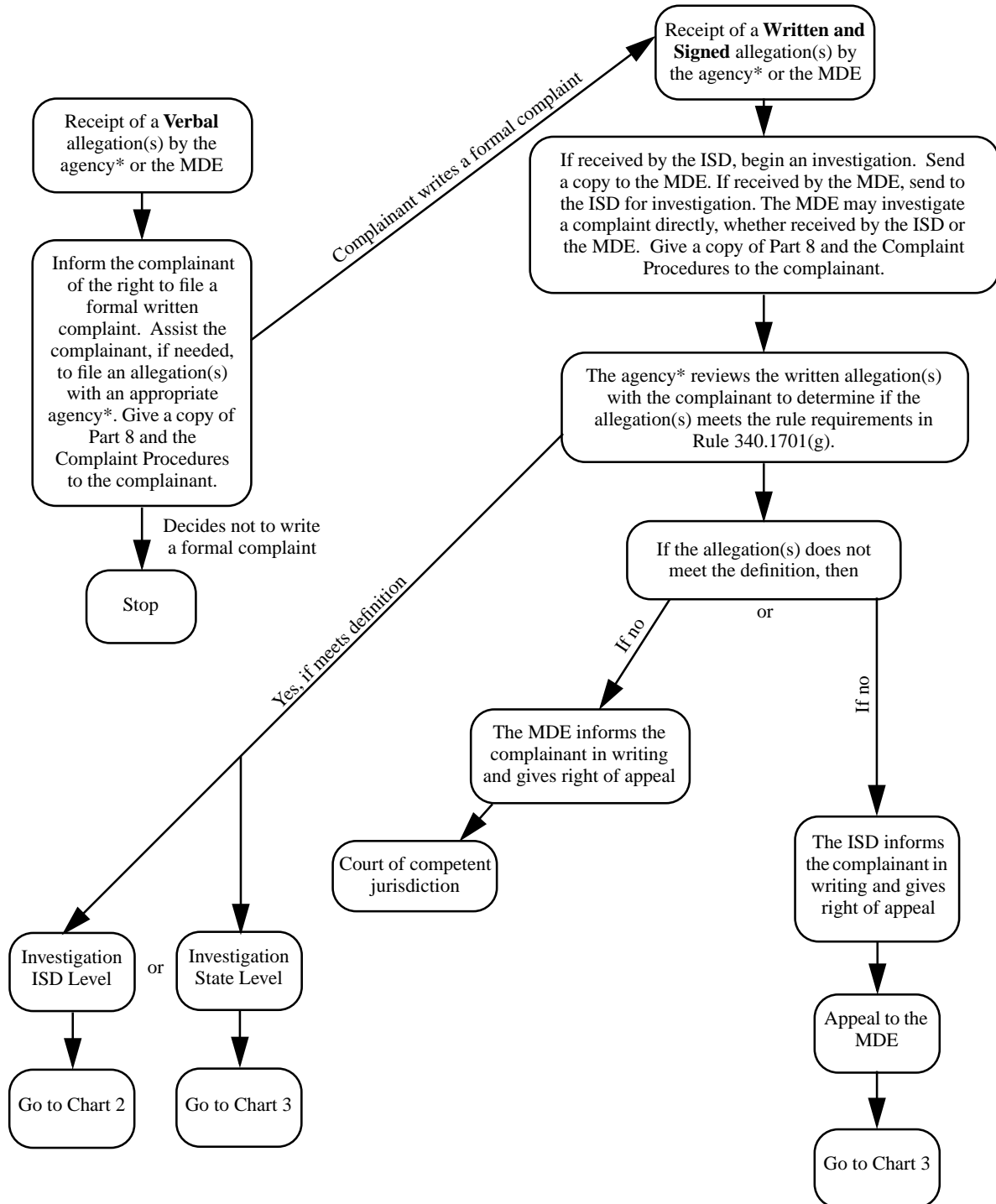
initiative, may also investigate a complaint rather than refer it to the ISD if it is in the best interest of the student(s) to do so.

The MDE shall notify the complainant and the public agency of the right to appeal the MDE's final decision to a court of competent jurisdiction.

VI. COOPERATION WITH THE MICHIGAN DEPARTMENT OF EDUCATION

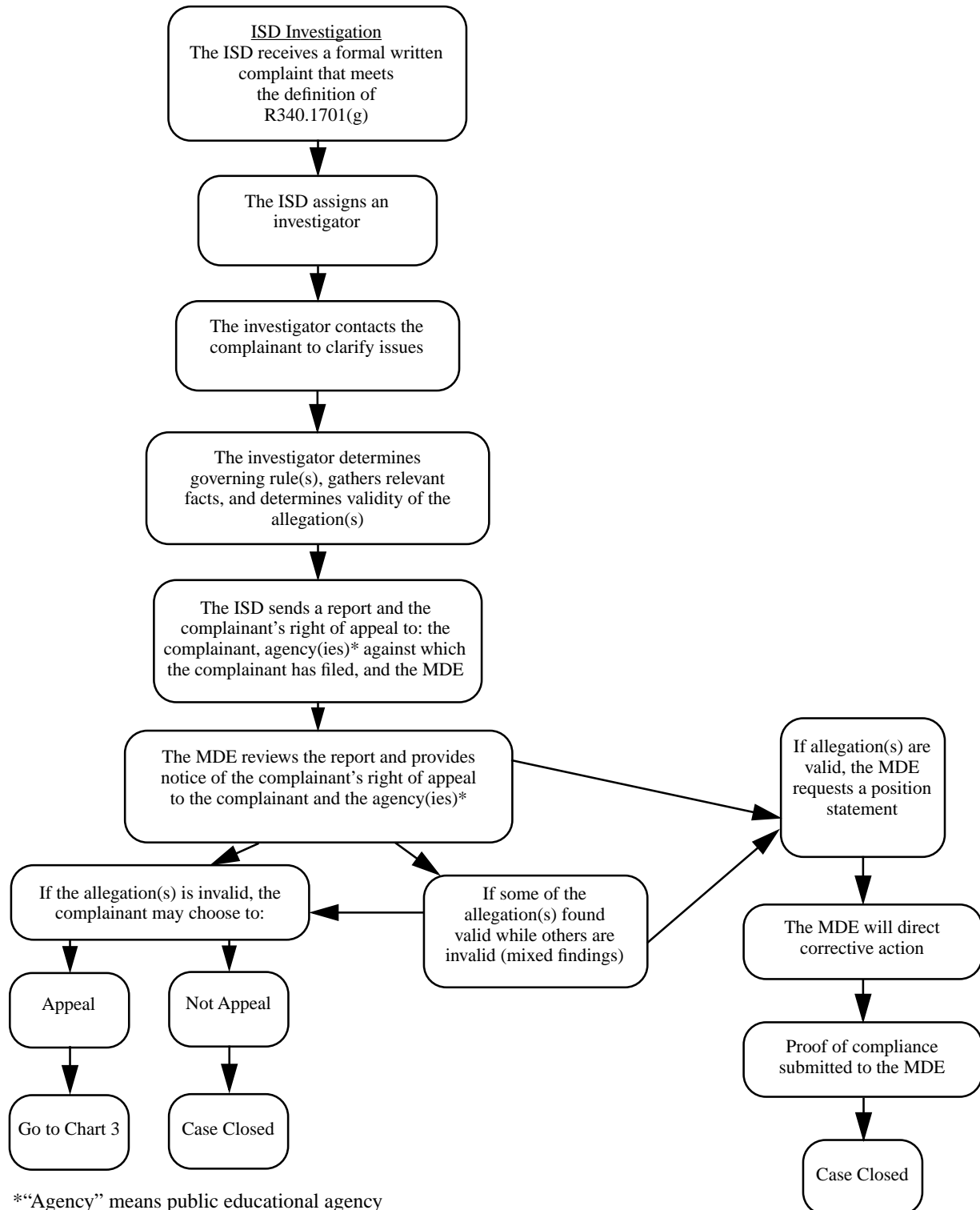
All governmental agencies who are allegedly in violation shall cooperate with the MDE or the ISD in the conduct of its investigation.

CHART 1 THE COMPLAINT PROCESS



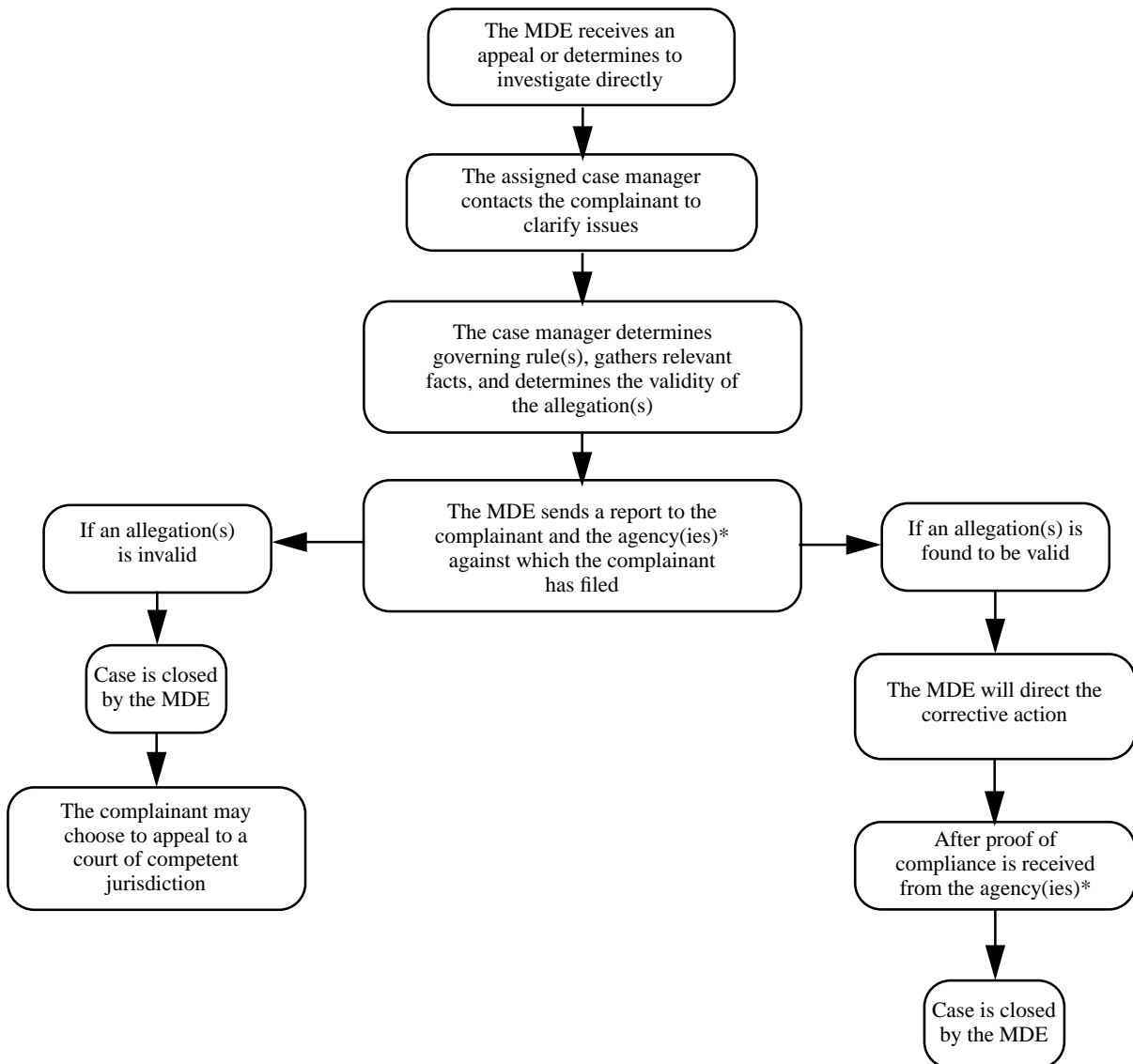
*"Agency" means public educational agency

CHART 2 THE INTERMEDIATE SCHOOL DISTRICT INVESTIGATION PROCESS



*"Agency" means public educational agency

CHART 3 THE MICHIGAN DEPARTMENT OF EDUCATION INVESTIGATION PROCESS



*"Agency" means public educational agency